In the High Court of Judicature at Madras

Dated: 13.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM

and

The Honourable Mr.Justice S.TAMILVANAN

Writ Appeal Nos.3382 and 3383 of 2003
and WAMPs.No.6641 and 6642 of 2003,
555 and 556 of 2004 & 4314 and 4315 of 2005

The Zonal Manager,
Food Corporation of India,
2, Haddows Road,
Chennai-6. ..Appellant in both Appeals

..vs..

1. The Workmen represented by
   the Convener, FCI Labour
   Federation,
   7/2 Barma Kanakamma Street,
   West Mambalam,
   Chennai-33.

2. The Industrial Tribunal,
   Tamil Nadu High Court Campus,
   Chennai-104.

3. FCI Workers Union through
   its Assistant Secretary,
   58/1 Diamond Harbour Road,
   Calcutta.

(R3 impleaded as per the order of Court in WMP No.16890/99 dated 28.1.2000)

..Respondents in
W.A.3382 of 2003

1. The General Secretary,
   FCI United Employees Union,
   No.,FCI Road Chathiram,
   Pattabiram,
   Chennai-72.

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2. The President,
   Tamil Nadu FCI Workers' union
   No.50 Parvathi Illam,
   Amman Koil Street,
   Dr.Ambethkar Nagar,
   Pattabiram Nagar,
   Chennai-72.

3. The Industrial Tribunal,
   Tamil Nadu High Court Campus,
   Chennai-104.

4. Workmen of FCI Avadi Depot
   rep.by FCI Workers Union
   Regd.No.8219).

(R4 impleaded as per order of Court dated 14.1.2000 in WMP.NO.21458 of 1999) ..Respondents in W.A.No.3383 of 2003

Writ Appeals filed under Clause 15 of the Letters Patent Appeal, against the common Order passed in W.P.No.11416 and 12416 of 1999 dated 14.08.2003 Petitions filed under Art 226 of the Constitution of India for the issue of Writ of Certiorari calling for the records in I.D.No.55 of 1993 and I.D.No.39 of 1992 culminating in the awards dated 29.7.1998 and 19.2.1997 respectively passed by the Industrial Tribunal, Madras and quash the same

For Appellant : Mr.N.G.R.Prasad for
in both the WAs Mr.S.Vijayakjumar

For Respondents : No appearance for R1
(W.A.3382/2003) R2-Tribunal
Mr.R.Yashod Vardhan for R3

(W.A.3383/2003) : Mr.G.Venkataraman for
M/s.Aiyar & Dolia for R1
No appearance for R2
R3-Tribunal
Mr.R.Yashod Vardhan for R4

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COMMON JUDGMENT

P.SATHASIVAM, J.,

Aggrieved by the common order dated 14.08.2003 made in W.P.Nos.11416 and 12416 of 1999, Zonal Manager, Food Corporation of India, Chennai-6, has filed the above writ appeals.

2. The case of the appellant / petitioner in brief is as follows: Pursuant to the orders of the Supreme Court, the Government of India referred the question of abolition of Contract System in Food corporation of India (in short "FCI") to the Central Advisory Board, which considered the issue and submitted a report. Central Government issued a Notification under Section 10 (1) of the Contract Labour (Regulation and Abolition) Act, 1970, prohibiting the employment of Contract Labour in any process, operation or work of handling the food grains including their loading and unloading of any means of transport, storing and stacking in the food storage depots and godowns of Food Corporation of India, Avadi, Tamil Nadu, which was the subject matter of reference in I.D.No.39 of 1992.

3. The Central Government prohibited employment of Contract Labour, inter alia, in several godowns and depots of FCI in Tamil Nadu, Karnataka, Kerala and Andhra Pradesh, which was the subject matter of reference in I.D.No.55 of 1993.

4. The Unions attached to FCI raised an industrial dispute for regularisation of Contract Labour employed in Avadi depot. Conciliation proceedings, which took place before the Regional Labour Commissioner (Central), were not successful. On 20.06.1991, the Agreement with Thiru Vi Ka Labour Contract Cooperative Society came to an end and thereafter, the Management (FCI) did not renew the Agreement. On 15.11.1991, Unions raised an industrial dispute relating to regularisation of workmen in Food Storage Depots in South Zone, wherein Contract Labour System had been abolished by Notifications dated 01.11.1990, 31.12.1990 and 27.03.1991.

5. On 06.04.1992, Government of India referred the following issue for adjudication by the Industrial Tribunal, Madras;

> "Whether the action of the management of Food Corporation of India, in denying to regularise 955 contract labourers engaged by the management of FCI Godown, Avadi, through TVK Cooperative Society in respect of names as given in Annexure is justified ? If not, to what relief they are entitled to ? "

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This was taken on file by the Industrial Tribunal, Chennai as I.D.No.39 of 1992. Pursuant to the same, FCI United Employees Union and Tamil Nadu FCI Workers Union filed their claim statements. Their main contentions were that after the abolition of Contract Labour in the Avadi depot, the contract with TVK Cooperative Society was not renewed after 20.06.1991. The workmen, who had been employed for 15 to 20 years, were doing the work of a perennial nature and were doing the same as the permanent employees of FCI. FCI had departmentalised and absorbed similarly placed workers in Egmore and Harbour Depots as well as various other depots of FCI in other States. It is their claim that, hence 955 employees were entitled to regularisation from the date of Notification. FCI filed a counter statement in I.D.No.39 of 1992, disputing various averments made by the Unions.

6. On 17.06.1993, Government of India referred the following dispute for adjudication by the Industrial Tribunal, Madras;

> "Whether the services of workmen employed in different Food Storage Depots in FCI in the south where Notifications have been issued prohibiting engagement of contract labourers under Section 10(1) of CL(RLA) Act are entitled to be regularised and if so, from which date ?"

This was taken on file by the Industrial Tribunal, Chennai as I.D.No.55 of 1993. The Union filed claim statement in I.D.No.55 of 1993 raising similar contentions as the claim statement in I.D.No.39 of 1992. The management did not file any counter statement, despite grant of adequate opportunities; hence FCI was set ex parte on 24.02.1997.

7. By Order dated 19.12.1997, the Industrial Tribunal passed an award in I.D.No.39 of 1992 directing FCI to regularise and departmentalise 955 workmen from 28.02.1990, the date of Notification. On behalf of the Unions, two witnesses were examined and Exs.W-1 to W-43 were marked. The management did not examine any witness and marked any document. After analysing the same, the Tribunal found that TVK Cooperative Labour Contract Society had ceased to exist after 20.06.1991 in view of non-renewal of agreement. Workers were being directly paid by the management. Workmen had proved that the work was perennial in nature and that the workmen were performing duty as permanent workmen. On the other hand, no contra evidence had been let in by the management. In other regions as well as in Egmore and Harbour depots, the workmen had been regularised.

8. On 29.07.1998, the Industrial Tribunal in I.D.No.55 of 1993 passed an award directing FCI to regularise the services of the workmen employed in various food storage depots in South India, where Notifications were issued prohibiting engagement of contract labour. The Tribunal after referring to the award in I.D.No.39 of 1992, observed that the same reasons should be

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applied to I.D.No.55 of 1993 and directed regularisation.

9. FCI filed W.P.No.11416 of 1999 in this Court, challenging the award in I.D.No.55 of 1993. In the affidavit, it has been averred that Direct Payment System was introduced from 01.05.1996. It was also stated that the workmen at all storage depots, where Notifications had been issued prohibiting engagement of contract labour, had already been regularised. Significantly, no reason was given as to why the management had not filed any counter statement and as to why the management has not taken steps for setting aside the order setting it ex parte in the industrial dispute.

10. Challenging I.D.No.39 of 1992, FCI filed W.P.No.12416 of 1999 before this Court.

11. By a common order dated 14.08.2003 in the above writ petitions, the learned single Judge, held that the award of the Industrial Tribunal had not been based merely on the decision of the Apex court in Air India Statutory Corporation ..vs.. United Labour Union and Others (1997 (1) LLJ 1113); the Tribunal had found, on facts and on materials placed, that there was no involvement of contractor after 1991 and that direct payment to workmen were also being made. The further conclusion is that the work was perennial in nature and workmen engaged in similar capacity in other parts of the country and in Egmore and port godowns of FCI of Tamil Nadu had been regularised. It is further stated that it is unjust and improper to deny such benefit to the workmen, who had raised the two industrial disputes. The learned Judge further held that even applying the standards laid down by the Supreme Court in Steel Authority of India Limited ..vs.. National Union Waterfront Workers ((2001) 7 SCC 1), the reasoning given by the Tribunal was justified the direction regarding regularisation. For these reasons, the writ petitions filed by FCI were dismissed. Against which, the above writ appeals have been filed.

12. Heard Mr.N.G.R.Prasad, learned counsel for the appellants FCI, Mr.G.Venkatraman and Yashod Vardhan for workers Union.

13. The only point for consideration in these appeals is whether the direction issued by the Tribunal is acceptable and whether the learned Judge is right in affirming the said direction ?

14. Mr.N.G.R.Prasad, learned counsel appearing for the appellant FCI vehemently contended that inasmuch as the Tribunal passed an award mainly on the basis of judgment of the Supreme Court in Air India Statutory Corporation ..vs.. Union Labour Union (1997(I) LLJ 1113), which was overruled in Steel Authority of India Limited and others..vs.. National Union Waterfront ((2001)7

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SCC 1), both the matters have to be remanded to the Industrial Tribunal for passing fresh orders on merits. On the other hand, Mr.Venkatraman and Mr.R.Yasod Vardhan appearing for FCI Unions submitted that de hors the decision of the Supreme Court in Air India Case (cited supra), sufficient materials were placed before the Industrial Tribunal for existence of copious employment, closure of Thiru Vi Ka Labour Contract Cooperative Society and direct payment by FCI to all the members of the Society, hence, there is no valid ground for interference. They also submitted that the learned single Judge, on consideration of all the relevant materials, finding that the Tribunal is justified in passing award and issued direction for regularisation, rightly dismissed the writ petitions filed by FCI.

15. It is true that the Industrial Tribunal, after narrating the stand of the workers Unions and management, basing reliance on the decision of the Apex Court in Air India case, passed an award and accepted the claim of the workmen. Before going into the aspect, whether the Industrial Tribunal possessed acceptable materials to pass an award as claimed by the workmen, it is useful to refer the decision of the Apex Court in Steel Authority of India'case (cited supra). After surveying the matter in depth, the Honourable Supreme Court outlined various aspects in para 125 of its judgment. Among those directions/observations, sub-clause (4), (5) and (6) are relevant:

> (4). We overrule the judgment of this Court in Air India case prospectively and declare that any direction issued by any industrial adjudicator/any court including the High Court, for absorption of contract labour following the judgment in Air India case shall hold good and that the same shall not be set aside, altered or modified on the basis of this judgment in cases where such a direction has been given effect to and it has become final.
>
> (5). On issuance of prohibition notification under Section 10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract labour in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial legislations so as to deprive the workers of the benefit thereunder. If the contract is found to be not genuine but a mere camouflage, the so-called contract labour will have to be treated as employees of the principal employer who shall be directed to regularise the services of the contract labour in the

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establishment concerned subject to the conditions as may be specified by it for that purpose in the light of para 6 hereunder.

(6). If the contract is found to be genuine and prohibition notification under Section 10(1) of the CLRA Act in respect of the establishment concerned has been issued by the appropriate Government, prohibiting employment of contract labour in any process, operation or other work of any establishment and where in such process, operation or other work of the establishment the principal employer intends to employ regular workmen, he shall give preference to the erstwhile contract labour, if otherwise found suitable and, if necessary, by relaxing the condition as to maximum age appropriately, taking into consideration the age of the workers at the time of their initial employment by the contractor and also relaxing the condition as to academic qualifications other than technical qualifications".

16. Let us consider whether relevant materials were projected before the Industrial Tribunal ('Industrial Adjudicator' as observed by the Supreme court) and its conclusion is in accordance with the decision in Steel Authority of India's case(cited supra).

17. In so far as I.D.No.39 of 1992, on the side of the workmen, two witnesses, namely, W.W.1 M.Arunachalam and W.W.2 A.Francis were examined. The Unions also produced and marked documents as Exs.W-1 to W-43. On the other hand, the management FC1 has neither examined anyone nor produced a single document in support of their stand. It is the specific claim of the Unions that the work of loading, unloading and stacking operations of food grains in the godown of the FCI is perennial in nature and the same is a main activity of FCI. The lorries and wagons carrying food grains are coming in and going out of the godown on all days and nights and to unload them, the services of the workmen were engaged by the FCI. The workmen engaged in loading, unloading and stacking operations have put in a minimum of 10 years and maximum of 27 years of service. It is also projected before the Tribunal that even though the work of loading and unloading and stacking operation is of a permanent nature, the FCI was engaging independent contractors to perform the work ever since 1965. The successive contractors utilised the services of the same workmen and the workmen continued to remain intact. The materials placed before the Tribunal show that in 1975, when the FCI advised the workmen to form a Worker's Cooperative Society, the workmen formed "Thiru Vi Ka Cooperative Labour Contract Society", which was awarded the loading, unloading and stacking work. The evidence adduced show that workmen, who were previously employed under the independent contractors, became the members of the said Cooperative Society and the said Society supplied labour

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force to FCI to perform loading, unloading and stacking work. When the Union filed a writ petition for abolition of contract systems before the Supreme Court, the Government was specifically directed to form a Committee to go into the question of abolition of Contract Systems in accordance with Section 10 of the Contract Labour (Regulation and Abolition) Act, 1970 in Avadi godown/depot of FCI. The Committee formed by the Government of India, went into the whole issue in depth and submitted a report to the effect that the work cannot be carried on through contract system. The opinion/suggestion of the Committee made the Government of India to issue various Notifications under Section 10 of the said Act. As rightly pointed out, after the issue of Notification, the FCI has no manner of right to continue the contract system in its Avadi Godown with regard to loading, unloading and stacking work. Materials were also placed before the Tribunal to show that the said Notification had been implemented by the FCI as regards North Zone, the non-implementation of the Notification as regards the South Zone, more particularly, in Avadi godown is at once discriminatory and arbitrary, attracting violation of Articles 14 and 16 of the Constitution of India. Materials have also been placed before the Tribunal to show that FCI having departmentalised contract workers employed in Madras Habour and Egmore, there is no justification in not implementing the same in respect of their Avadi godown. All these factual details in the form of oral and documentary evidence were considered by the Tribunal and in the absence of any contra evidence on the side of FCI, passed an award in favour of the workmen.

18. In I.D.No.55 of 1993, on the side of the workmen, one K.Narayanan was examined as W.W.1 and marked series of Notifications abolishing contract labours in South Zone as Ex.W-1. Here again, the FCI has not examined any one and not produced any document in support of their defence. The Tribunal, basing heavy reliance of its earlier order in I.D.39 of 1992 as well as the evidence of W.W.1 and Ex.W-1, series of Notification abolishing Contract Labour System in South Zone, accepted the claim of the workmen and passed award in their favour. It was projected before the Tribunal that the FCI has several Food Storage Depots, wherein work of handling of food grains including their loading and unloading in the whole of India is going on and the same were carried on by daily rated labour employed by Contract Labour Cooperative Societies or Private Contractors or by casual labours. Wheat, rice, soya beans, powder, sugar, fertilisers, milk powder, gift articles and other food grains are stored in these storage depots. In these depots, various activities such as loading, unloading, fumigation, replicating, spillage collection, stitching, spraying, stack brushing, decasting, cleaning, sweeping and similar activities are going on. For which, FCI has been engaging permanent workers as well as casual workers. It was also pointed before the Tribunal that by Notification dated 28.02.1990,

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the employment of Contract Labour in the Food Storage depots and godowns of FCI, Avadi was abolished. Similar Notifications were issued on 01.11.1990 27.03.1991, 26.02.1991 and 31.12.1990 in respect of other storage depots of FCI. The Contract Labour System in Food Storage Depots in North Zone of Haryana, Punjab, Uttar Pradesh and Rajasthan and Food Storage Depots in North Eastern Zone, East Zone, West Zone of Madhya Pradesh, Maharashtra, Gujarat was also abolished in various Notifications. It was further projected before the Tribunal that the workers listed in the annexure as gang workers or casual workers have been working in Food Storage Depot for 15 to 20 years. It was demonstrated before the Tribunal that all these workmen are continuing in service for a long period and their work is of a permanent nature and is essential to the main business of FCI, they are entitled to regularisation.

19. All the above mentioned material facts were projected before the Tribunal in the form of oral and documentary evidence in both the Industrial Disputes. The Tribunal after considering all those particulars and after satisfying itself with reference to facts and figures, issued appropriate direction for regularisation, though relied on the judgment of the Supreme Court in Air India case(cited supra).

20. Before the learned single Judge, the very same objections were projected, namely, that the decision relied on by the Tribunal has been overruled by the Supreme Court in Steel Authority of India's case (cited supra). However, after pointing out that though the said objection is prima facie acceptable, on scrutinising the materials placed before the Tribunal, ultimately the learned Judge sustained the award and rejected the contentions raised by the management. In order to meet the very same contentions, we referred to all the materials placed before the Tribunal in the preceding paragraphs of our judgment.

21. As rightly pointed out by the learned Judge, except the godowns/depots in Tamil Nadu, the Labourers engaged in similar capacity in other parts of the country have been departmentalised or regularised. As a matter of fact, even in this State, in respect of Egmore and port godowns of FCI, the workers have been departmentalised. We already mentioned that Notifications of the Government of India regularisating / departmentalising the workers' issue in respect of other States, were placed before the Tribunal. As rightly pointed out by the learned Judge, inasmuch as FCI is a Corporation having transactions throughout India, when it thought fit to regularise the workers in some parts of India, particularly in North, they are not justified in denying such benefits to the workmen in the State. Inasmuch as the main argument on the side of the appellant was projected for remanding the case to the Tribunal as if the materials placed before it were not considered, in the light of the evidence let in before

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the Tribunal in the form of various orders / Notifications by the Government of India, existence of more work in all the godowns, Food Storage Depots of FCI and of the fact that all those acceptable materials were correctly appreciated by the Tribunal, we are of the view that there is no case for remand. As rightly pointed out by the learned Judge as well as correctly observed by the Tribunal, the FCI, which is a wing of Government of India, should be a model employer, more particularly, when they are having plenty of continuous work and are in need of more work Force, we are satisfied that both the Unions are justified in their demand for regularisation and for departmentalisation.

22. Under these circumstances, we are in entire agreement with the conclusion arrived at by the Industrial Tribunal in passing award and the reasoning of the learned single Judge in confirming the same. Consequently, both the Writ Appeals fail and are, accordingly, dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar.

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Sub Asst. Registrar.

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To

1. The Industrial Tribunal,
Tamil Nadu High Court Campus,
Madras.

2. The Zonal Manager,
Food Corporation of India,
2, Haddows Road,
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3. The Convener Workmen
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4. The FCI Workers, Union through its
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5. The General Secretary
FCI United Employees
Union 8, FCI road, Chathiram, Pattabiram, Chennai-72,

6. The President, Tamilnadu FCI(Workers
Union No.50, Parvathi Illam, ammankaoil Streer,
Dr. Ambedhkar Nagar, Pattabiram Nagar, Chenani-72.

7. Workmen of FCI Avadi,Depot, rep by FCT
Workers Union (Regd.No.8219)

2 ccs to Mr.S.Vijayakjumar, ADvocate, sr. 62049, 62050
2 ccs to Mr.R. Yashod Vardhan, advocate sr. 61886
1 cc to Mr.R. Arumugam, Advoate, sr 62190

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